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**THE UNITED STATES, HUMAN RIGHTS,
AND A REJECTION OF UNMEDIATED DEMOCRACY**

The present volume is as baroque and diverse as the United States. It is a mere motley of articles dealing with the country's past and a present which has moved the imagination mainly of young authors, approaching the phenomenon of America mainly from the European perspective.

What is the meaning of American civilization, what is its distinctiveness? How does American civilization distinguish itself in comparison with other civilizations? How has it developed, changed, what has been a distinctive American answer to the torturous challenge of modernity? In America everything began at once, and what modernity held dramatically in store for humanity has been experienced in the United States in a condensed form from the beginning. But at the same time America has also been best equipped to meet that challenge, not only for the simple reason that, from the earliest times of its existence, it has been able to develop the most elastic and lasting form of "ordered liberty", but also because of reasons pertaining to its pragmatic, anarchistic, down-to-the-roots way of being and acting, to wit, its traditional mundane practices and ways of being.

For many reasons America is a messy, quarrelsome, never resting place, constantly battling over the meaning of its founding myths, their contemporary embodiments, their accuracy concerning answers to the challenges of the modern predicament, and last but not least, battling over the limits of human freedom which are at the very core of American civilization. Modernity is a totally unpredictable business, so well captured, even if subconsciously, by this immemorial and inde-

structible dream written into the Declaration of Independence of 1776 and embodied in the words “pursuit of happiness”. This phrase is a magical expression, because it is the modern equivalent of a belief in magic. As a protagonist of the quintessentially American novel by F. Scott Fitzgerald *The Great Gatsby* says, magic is the essence of modernity. It is this combination of modernity and magic which gives the American credo embodied in the phrase “pursuit of happiness” an inescapable hope of endless transformation, a dream of a better life. As the sociologist and theologian Peter Berger succinctly points out, speaking about the message contained in *The Great Gatsby*, the essence of America has always been the fiercely personal dream, “a recurring experience, that anything can happen here – and it could happen right now”.¹

The United States is a fiercely individualistic country but at the same time yearning for a solid ground of freedom. Modern individualism, at its very core, rejects passive acceptance of fate, a quietistic acquiescence in one’s given life station. For this reason, by its very logic it fosters pluralism, and at the same time, if carried to its extremes, it can destroy not only the ethical basis on which such a plural society rests. And with that it can destroy the “ordered liberty” which allows America to accept pluralism and freedom understood as the “pursuit of happiness” and somehow not to disintegrate, but to prosper. This is so because there exists at the very core of this civilization, of the American people as the quintessential people of modernity, a powerful, neurotic, metaphysical yearning to combine freedom as a rejection of fate, of the ultimate inescapable nature of one’s station in life, with a metaphysical yearning for a moral order upon which this freedom should rest, an old, never dying echo of the once conceived of and never revoked Covenant with the Almighty, another pillar of that “sacred” text of the United States, the Declaration of Independence.

America was never a Christian state, an essential fact expressed in the federal constitution of 1787 and the Bill of Rights of 1791, the document which made sure that the European historical model would never repeat itself there. But it was once a Christian *society*; its cultural code was once anthropologically entirely Christian, or Judeo-Christian, even if in its practical operation this code was of a Protestant, fiercely individualistic, often suffocating nature, which nevertheless built a great civilization. But this Protestantism was distinctively American. It was haunted by a fear of failure and slide towards sin at the individual as well as at the community level, the fear of failure to make this new civilization worthy of its promise. This Protestantism, also influencing other faiths, was on the one hand full of unprecedented individualism, but on the other hand it was infused with austerity and dogmatism.

Altogether, this Protestantism made an individual life, in an environment of unbound challenges of the vast empty spaces beyond the social orderliness accruing for millennia in Europe and spiritual orderliness provided by Rome or the

¹ P. Berger, *Facing up to Modernity*, New York 1997, p. 218.

Crown, bearable. This was a situation akin to the Jewish Covenant carried through history in an essentially alien world.

America is no longer a Christian society. It is much more anthropologically pluralistic, with a substantial number of its post-1968 elite secularized. This elite is infused with a hubristic thinking, that their hour is the last hour of history and their hallowed task is to complete its end through a total “liberation” from any “oppression”, real and imaginary. This “liberation” has as its aim the creation of a new man, where freedom in this world would become tantamount to moral auto-creation. This is an idea as modernist as it is totalitarian in its consequences. But apparently it has to run its course until the generation of the “revolution of 1968” dies out, so the new generation can clear out the debris.²

But, although America is no longer fully a Christian society, it is still definitely a religious society, where the challenge of the above, post-1968 anthropology, has been questioned. It is religious in two senses. First, because it fiercely professes religious faiths, mainly Christian, including the single most numerous Catholic denomination. Second, because at its core America is burned by an essentially metaphysical mentality, both in private and in public. It is a country still totally devoid of any metaphysical boredom, so prevalent in Europe, and with that, of that utopian dream of a post- metaphysical, and as a consequence a post-political society, which is the essence of the European Union project today. Although Americans are by disposition, by procedures and by the operations of their institutions the most democratic people in the world today, this is a fairly distinctive model of democracy, different than the European one. America has never allowed itself to separate its democratic faith and democratic virtues from the grassroots understanding of freedom as an ability to establish and guard their own autonomous communities and their ability to teach ethical life from the bottom up, that is from a place where real love can only thrive, then offering such educated citizens for the community at large. Americans have never, so far, denounced their fierce love of independence for the security of the welfare state, which decides for them what they should think, eat and behave, the “ordered” revolt against Obama’s presidency being the latest example of this predisposition. In other words, they have never understood their democratic ideal as a system which separates their democratic virtues from their roots of tradition, religion and, especially important today, from the political framework of the nation-state. They have not succumbed to the post-political temptation, which is at the same time a totalitarian temptation, so visible in Europe today.

That is true – Americans are always willing to identify everything they think they are and they do with democracy – but this is not the same predisposition as visible in an the contemporary fashionable idea of the humanitarian democracy, a kind of universal regime denying democratic ways of acting of self-governing people, and precisely because of this, attached to national sovereignty and reco-

² On that very convoluted, torturous process with many ramifications and unpredictable consequences see: H. Hecló, *Christianity and American Democracy*, Cambridge Mass. 2007, esp. p. 29–64, 95–144.

gnizing and defending the uniqueness of traditional arrangements. Humanitarian democracy is increasingly identified in contemporary international language as tantamount to a world regime of human rights, with judges, NGOs and international organizations becoming their guardians, the *alpha* and *omega* of the politics of our era. Democracy in such a context may increasingly become nothing less and nothing more than an invention, as Nietzsche said, of happiness, the final transcendence of the self, or

the “gathering of humanity in a unified consciousness, a consciousness of unity that allows us to say and obliges us to say: we, we the human beings. Thus, just when today’s humanity seeks and is proud to exclude nothing of what is currently human, it excludes its whole past, all past generations. At the very moment when it embraces itself wholly it ceases to comprehend itself ... [This is the world] when everything is predictable – modern humanity is not very enterprising. It is already altogether and wholly human in its own eyes. To be human is a fact to note and even to celebrate, more than a task to accomplish”.³

In other words, democracy in such a perspective ceases to mean the self-governing people. They simply become celebrants of the end of post-political history administered by judges, administrators, experts who decide what human rights are, or, rather should be. Such a democracy delegitimizes self-government. Such deference to universal humanity, to universal moral and political truths, means that there is a danger that any particular country is legitimate only if it gives its citizens access to the universal totally unmediated by self-governing institutions. But that is simply an impossibility, since this would require that such a country should repudiate the entire culture, tradition, ways of life, autonomous institutions, in other words that they would have to repudiate its entire identity mediated through self-governing institutions. Such a perspective is, of course, a consequence of the post-1968 anthropology, which in turn constitutes a mass incorporation into a contemporary cultural, social, political and legal language, taken for granted, of the much earlier philosophical currents of the so-called modern “disenchantments”. The first philosopher of disenchantment was of course Rousseau, who defined the very concept of culture and civilization as problematic, as a great “lie”, as a site not of a sense accruing in a process of human experience through different trial-and-error methods of adjustment, but one of “false consciousness”. This was captured by his phrase “man was born free but everywhere he is in chains”. The idea of “liberation” from oppression of culture, religion, tradition, in fact of everything was its natural corollary. In their place Rousseau erected a new “God” who is not, of course, a Judeo-Christian God, upon which European civilization rested, and who according to Rousseau, by implication, was part of that corrupting framework of civilizational debris limiting human potential, not a transcendental

³ See on that P. Manent, *A World beyond Politics? A Defense of the Nation State*, Princeton 2006, esp. p. 129. The phrase “we have invented humanity” is of course from Friedrich Nietzsche’s *Thus spoke Zarathustra*, New York 1954, p. 17.

God of moral universal law ordered to humans as a precondition of their sanity and their ability to make sense of the limited, fallen world, but a “God” who was historical, but historical in a particular sense. Historical at the dawn of time, in the state of nature. And that “God” was the “God” of uncontaminated human self in a hypothetical, but nevertheless once existing, state of nature. Thus the escape from a corrupted world is located in the “great absence” which once was, is no longer here, but which can be reclaimed. The road to this reclamation was to be an authentic, uncontaminated “self” to be recovered from the corrupted layers of civilization as such. Civilization, culture and religion in that, are corrupted, but once the authentic “self” has been recovered, all traditions, customs, human institutions, will be cleansed in a process of their liberation from false arrangements. They will finally be freely chosen by an authentic, uncontaminated “self” who can now freely choose the best possible arrangements according to his good innate nature once possessed in the state of nature and lost through historical process.

This dream of leaving an alienated world, of finally liquidating an innate, horrible sense of human limitations and a sense of unhappiness, will finally be realized. This was the first modern embodiment of the old Gnostic dream of human salvation by human means, the intellectual beginning of the modern process which turned from metaphysics to history. But it also meant a drastic turn from a plurality of means to making sense in this world, into a monistic means of imposing a sense in this world, the turn from culture, from religion, myth, anything to raw politics as salvation in history. To politics, which meant to power and ideology. This was a dramatic revolution in looking at the world and the approaches to human meaning in it. But it was also a profoundly elitist, Gnostic impulse, a totalitarian impulse in fact, of a turn from democratic ability of each person, rich and poor, wise and stupid, knowledgeable and ignorant, to understand the essence of human existence which was in fact the very essence of Christian orthodoxy.

Rousseau was the first to want to destroy old gods, but instead he destroyed God – of course in his own imagination – and as modernity progressed in the imagination of the masses they began to believe that a recovery of an authentic self-meant liberation, not an enslavement to the most powerful. This was so because the God of Christianity was transcendental, an ultimate taboo taking care and protecting each individual against anyone who wanted to destroy it. God was untouchable, as a transcendental God, and because of this a person protected by Him was untouchable. With a destruction of this God – imaginary of course – the ordinary people were left with politics and history as the last line of defense of the once existing political monistic brutal life of antiquity. From now on the game was to make a sense of that new situation by creating a safe political environment. But the “liberation” logic destroys here one of the most cherished defenses of that, the self-governing, ordered liberty nation-state, liquidating it as another mediating institution, which prevents us from finding a true self by human rights.

The problem is that such human rights are at the mercy of the strongest since they are self-referential and based on the anthropology of the autonomous self, which makes them subject to incessant manipulation. Rousseau was kind of a quasi-religious thinker bent on destroying old gods, but only putting a void in their place. When he attacked civilization, he in fact attacked culture in which

all that we value is rooted. Sacred and profane, virtue and vice, good and evil – all these compete in the undergrowth of custom. Clear custom away, and you take away much evil. But you also take away the knowledge of evil. Hence, you make way for evil of another kind, in which people – inoculated against remorse and assuming an absolute right to demolish whatever impedes their rational plan for human happiness – embark on vast social experiments. This happened at the French Revolution... There is a lesson to be drawn from Rousseau that is of great importance today. Social contests and tensions have been conceptualized in a way that favors the liberal cause. Every conflict is seen in terms of power: who enjoys it and who suffers it – ‘Who? Whom?’, in Lenin’s summary. But the deep conflicts concern not power but knowledge. Which institutions, which procedures, and which customs preserve and enhance the store of social knowledge [are] attacked”.⁴

This disenchantment of the world then proceeded through Karl Marx, for whom false consciousness and the alienation of man was something to straighten out by revolutionary means.⁵ Friedrich Nietzsche and Sigmund Freud completed this gnostic task. Reality was something unreal, the classical definition of truth an illusion; post-modernism was just a logical consequence of that, liberation through a proper consciousness which closes alienation.⁶ What was at stake here was a total rejection, a total deconstruction in social sciences, in political science, in culture as such of the so-called substantial entities, or things per se, as Platonic constructs which had to be rejected since they invite fundamentalism and oppression. The revolution of 1968 changed the nature of liberalism through an incorporation of the New Left concept of “liberation” from any oppression, the adulation of the sovereign autonomous self who in a process of moral auto-creation shapes his destiny.

All institutions beginning with family, schools and churches, institutionally and conceptually were oppressive. As a consequence such entities as the nation, national culture, society, civilization, national character, even the nation-state became suspect. The conviction that there exist more or less lasting cultural features, or cultural ties, and in these political ties, was gradually rejected. What counted was the “self”, a bearer of the individual rights which were to guard his dignity, that dignity which was defined by rights, essentially a circular argument. Human rights were increasingly justifying the desire of the autonomous self to fulfill his wishes.⁷

⁴ An excellent analysis of this problem was done by R. Scruton, *Rousseau and the Origins of Liberalism*, [in:] *The Betrayal of Liberalism: How the Disciples of Freedom and Equality Helped Foster the Illiberal Politics of Coercion and Control*, ed. H. Kramer, R. Kimball, Chicago 1999, p. 41–42.

⁵ The best study of this Gnostic impulse in Marx is still L. Kołakowski, *Main Currents of Marxism*, Oxford 1976.

⁶ K. Dorosz, *Maski Prometeusza. Eseje konserwatywne*, London 1989, p. 194–217.

⁷ L. Kołakowski, *Kant i zagrożenie cywilizacji*, [in:] his, *Czy diabeł może być zbawiony i 27 innych kazań*, Kraków 2006, p. 185–197.

The last non-deconstructed institution at the global level is the nation-state. What is at stake here is a destruction of all the mediating structures, of which one of the most important is the nation-state. A destruction of this based on self-government, democratic, if messy procedures constitutes the latest stage of that anti-fundamentalization, emancipation, liberation to the unmediated humanity through human rights based on the idea of dignity which is in fact self-referential and directs us more and more today to our autonomous “self” tantamount to our desires.⁸

America has of course always been a universal nation, and the essence of the Declaration of Independence is exactly that. And universal here means ontologically universal, that is congruent with the innermost rules of natural order. Covenant mentality was part of that universality, *novus ordo seclorum* its battle cry. But prudence has always been part of the major American principles, the guiding spirit of Madison and other Founding Fathers like James Wilson or Dickinson, who understood, probably more than Thomas Jefferson, that there was no immediate access to that universality, even through the agency of intellectuals, experts, brilliant politicians, let alone brilliant judges. That access has always been thought to be legitimate only through self-governing institutions or, in other words, mediated by tradition and culture of a particular people. This is why such access to human universality was contentious, quarrelsome, a battle over the meaning of the universal, a constant tension to be aware of where one was going and what dangers might lay ahead. No wonder Dickinson, during the Constitutional Convention in Philadelphia, warned the delegates: “Experience must be our only guide, reason may mislead us”. No wonder, again, that this quintessential American, Abraham Lincoln, the most ethical and most driven by universal concerns, was aware that America was only an “almost chosen nation”. That meant that the United States is, like the Western world in general, a nation

which “would cease to be true to itself if it repudiated the universality of its principles. But America surely owes much of its greatness to particular national characteristics, to what Orestes Brownson has suggestively called a ‘providential constitution’. Otherwise America is in principle ‘the world’, the prototype of a unified humanity, and is destined to be swallowed up by a global imperium that no more fully embodies the ‘democratic’ aspirations of the whole of mankind”.⁹

The unmediated access to universal humanity defined as the world reign of human rights is a utopia concocted by the post-1968 generation, figuratively speaking, for the simple reason that its main ideology, which may be termed, for want of a better word, liberal-left, is operated by the idea precisely of “liberation” from all constraints, cultural, national, religious or any other, so as to get to the core of the essence of the uncontaminated man who will then be able to form the brother-

⁸ M. Sandel, *Democracy's Discontent*, Cambridge Mass. 1996, p. 3–54.

⁹ D. J. Mahoney, *Conservatism, Democracy, and Foreign Policy*, “The Intercollegiate Review”, Fall 2006, p. 12.

hood of universal humanity with others.¹⁰ In that sense American democracy, by instinct if not by clear reasoning, is fiercely resisting the modern post-1968 utopian project of the liberal left, for which democracy is the highest value, in the sense that it identifies it with a total project of “liberation”, the emancipation of human beings from traditional, cultural, moral, even political limitations, so as to create brotherhood of men, universal humanity based on human rights administered by experts, judges, international bureaucracies and a motley of NGOs which try to elicit the help of the human rights agenda to have their ideas defined as universal. In this way the post-political project of universal humanity based on human rights ceases to be universal; it reveals the sinister face of a particular power grab. It is not post-political, democratic and universal. It is not fulfilling the promise of human rights. It is totally political, and totalitarian at that, absolutely undemocratic, that is beyond democratic control, and particular, not universal.¹¹

In that sense America is not post-political but fiercely political, not anti-democratic but democratic, and universal because it is particular. Intellectual discussions in the United States, which in the post-1968 world of “liberation” comprise more and more aspects of human life, are thus today fiercely political, and democratic, getting into the very essence of a problem of the human predicament. America is resisting the temptation of universal humanity that is politically realized, administered by human rights institutions and agendas.¹² It knows that there is no other way to get to the essence of true humanity than through self-governing people, with the realization that morality is the province of every human being, his reasoning and his common sense. This idea was well captured at the beginning of the United States by James Wilson.

And that is why public discussions in America are not post-political, but political to the very core, full of zeal over the meaning of community, decent life and a proper setting for free self-governed people. Such discussions cut across society like lightning in the sky, something which has been captured by the term “culture wars”.¹³ But Americans battle each other fiercely in the province of ideas, because their democracy is not their faith, but their *modus operandi*, so they can show that as people, as citizens, they care about something, that something being the shape of civilization for free people creating the world of autonomous institutions that are ethically enriching, which then provide ethical citizens for the polity.

¹⁰ An interesting early argument along these lines was given by C. Wilson, *Global Democracy and American Tradition*, “The Intercollegiate Review” 1988, Vol. 24, No. 1.

¹¹ See on this a growing literature, for example J. Rabkin, *Law Without Nations? Why Constitutional Government Requires Sovereign States*, Princeton 2005; C. Delsol, *Unjust Justice: Against the Tyranny of International Law*, Wilmington De 2008; R. Hirsch, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism*, Cambridge Mass. 2004.

¹² A. Bryk, *Stany Zjednoczone a Unia Europejska. Odmienne kultury i podejścia do nowoczesności*, [in:] *Wzrost gospodarczy czy bezpieczeństwo socjalne?*, ed. W. Bienkowski, M. J. Radlo, Warszawa 2010, p. 223–260.

¹³ The term was first used, as it is generally claimed, by James Davison Hunter. See the entire discussion of that issue in J. Davison Hunter, A. Wolfe, *Is There a Culture War? A Dialogue on Values and American Public Life*, Washington DC 2006, p. 10–40.

The major battle today in America can politically be defined as a battle between American liberalism – that is by the European standards of the post-1968 liberal left – and American conservatism. American conservatism has very little to do with the classical European conservatism. It is essentially about constitutionalism, that is limited government and freedom of people from the ubiquitous intrusion of government, understood as an agent of incessant social engineering according to the preconceived notion of what a perfect society should look like. This battle in Europe is nearly non-existent today, for political as well as cultural reasons of societies exhausted and content with a quietistic welfare state preoccupied with global warming and dreams of a future utopia. But in America it is intense, grassroots and consequential. The battle is essentially over the meaning of democracy and its requirements. In concrete terms it is, internally, about the autonomy of civil society institutions, internationally about resistance against transnational governance.¹⁴

Contemporary American liberalism, like all the liberal-left movements in the Western world, including the European liberal left currently at the helm of the European Union, is deeply dissatisfied with “mere democracy” and its prosaic institutions. Democracy should, in their judgment, mean something more, something meaningful; it should be understood as a way of life, in other words as a new metaphysics of which the orthodoxy is the church of human rights, and the state as an agent of implementation of a better society. In the American context this new opening in the understanding of American democracy came with, some say – wrongly most likely – Abraham Lincoln, but definitely with the Progressive Movement and its major spokesman Herbert Croly.¹⁵ It was Croly who argued that majority rule is

merely one means to an extremely difficult, remote, and complicated end [and that the] bestowal and the exercise of political and civil rights are merely a method of organization... [To be legitimate, they must be] used in proper subordination to the ultimate democratic purpose [which is] the gradual creation of a higher type of individual and associated life. [If not so enlisted] the actions or decisions of a majority need not have any binding moral or national authority”.¹⁶

Civil and political rights in such a way are means of organizing democracy, as the very essence of democracy was to pervert the principle of national sovereignty, as Croly stated.

John Dewey, the most influential theoretician of progressive education as a way of creating a perfect democracy as the ultimate “religion”, made education one of the most important tools of such a philosophy of life. Not a proper moral education, but moral education towards a democratic society, the shape of which

¹⁴ That is the gist of the conservative revolt against Barack Obama. See A. Bryk, *Konserwatyzm amerykański od Reagana do Obamy*, forthcoming in OSP, Krakow 2011.

¹⁵ A thesis that it was Abraham Lincoln who began this equality, progressive revolution was put forth by G. Wills, *Lincoln at Gettysburg*, New York 1993.

¹⁶ H. Croly, *The Promise of American Life* in 1909, as quoted in W. Voegeli, *Days of Rage, Years of Lies*, “Claremont Review of Books”, Summer 2011, p. 18.

is of course decided by those who know.¹⁷ In other words democracy requires the emergence of new modes of human personality and social life. This means the new ethics, as opposed to traditional morality, that is morality as ontologically grounded in a definite human nature, as opposed also to traditions, virtues, and habits wrought over by experience, that is human culture. The problem was not that the majority rule is not a sufficient democratic freedom, that it should be limited by human and social rights. This is a condition taken for granted for any just society since the times of St. Augustine, through Locke to about every theoretician of liberal democracy today. The problem is that such theoreticians', or rather ideologues' image of such rights shaping the "proper democracy" may subvert the very idea of freedom and constitutional self-government upon which liberal modern society should rest. Or, to put it another way, may subvert the true democracy, which should be nothing less or more than free life of free people, the essence of their lives true by the very fact of them being in charge of their own destinies. Such free life of free people should be led according to the precepts of universal morality not dependent on the dictates of a democratic state, which is constantly being perfected by the new ideologues, according to the new image of a new man.

In America this fundamental conflict is alive, acted out in public, colorful, sometimes neurotic, nearly always messy, because it reflects the lives of free people. Understanding that good life must be defined from the bottom up, not from the top down. In other words the feeling of metaphysical tensions is part of a true political life, and metaphysics can never be given over to a state operated by experts, judges, or political philosophers. In that sense the United States is a baroque, fiercely metaphysical nation. Thus what is happening in America is ultimately about the kind of the liberal world people will be living in and whether they will have any influence on it, meaning their lives, the very essence of equal freedom, and ethical freedom in that.

¹⁷ See on this H. T. Edmondson, *John Dewey and the Decline of American Democracy: How the Patron Saint of Schools has Corrupted Teaching and Learning*, Wilmington De 2006, p. 21–35, 95–114.